

**INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
SECTION 1602 TAX CREDIT EXCHANGE PROGRAM
MORTGAGE**

THIS INSTRUMENT (the "Mortgage") WITNESSES: That **[MORTGAGOR]**, organized and existing under the laws of the State of Indiana ("Mortgagor"), hereby MORTGAGES and WARRANTS to the **INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY**, a public body corporate and politic of the State of Indiana, as administrator of the American Recovery and Reinvestment Act of 2009 (the "ARRA") Section 1602 Tax Credit Exchange Program, ("Mortgagee"), the real estate and improvements ("Real Estate") located in _____ County, State of Indiana, as more particularly described in Exhibit A, attached hereto and made a part hereof, together with all right, title and interest of Mortgagor in and to all: (i) rights, privileges, interests, tenements, hereditaments, easements and appurtenances in any way now or hereafter pertaining to the Real Estate ("Easements"); (ii) buildings and other improvements of every kind and description now or hereafter placed on the Real Estate, together with all fixtures, machinery and other articles of personal property now or hereafter attached to or regularly used in connection with the Real Estate, and all replacements thereof ("Improvements"); (iii) extensions, improvements, betterments, substitutes, replacements, renewals, additions and appurtenances of or to the Easements or Improvements ("Additions"); (iv) rents, issues, proceeds, income and profits of the Real Estate, Easements, Improvements and Additions, including all payments made in connection with leases, subleases and other agreements affecting the Real Estate, Easements, Improvements or Additions ("Rents"); and (v) awards, payments or proceeds of conversion, whether voluntary or involuntary, of any of the foregoing, including, without limitation, all insurance, condemnation and tort claims ("Proceeds"). (Hereinafter, the Real Estate, Easements, Improvements, Additions, Rents, and Proceeds are referred to together as the "Mortgaged Property").

This Mortgage is given to secure performance by Mortgagor of the covenants and agreements contained in this Mortgage and to secure payment of (i) all amounts due and payable from time to time under that certain promissory note ("Note") dated _____, 20__, executed and delivered by Mortgagor to Mortgagee in the principal sum of _____ (\$_____), and any other amounts payable to Mortgagee pursuant to the terms and provisions of the Note ("Primary Debt") as evidenced by that certain Loan Agreement dated _____, 20__ by and between Mortgagor and Mortgagee (the "Loan Agreement"); (ii) all sums advanced and costs and expenses incurred by Mortgagee which are made or incurred pursuant to, or allowed by, the terms of this Mortgage and the

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Note ("Advancements"); (iii) all costs of repossession, collection, disposition and reasonable attorneys' fees incurred by Mortgagee ("Costs"); (iv) all other indebtedness, obligations and liabilities of Mortgagor to Mortgagee, now existing or thereafter arising, whether fixed or contingent, direct or indirect, primary or secondary, joint or several, and regardless of how created or evidenced ("Additional Liabilities"); and (v) any and all extensions or renewals of any of the foregoing indebtedness ("Extensions"). (Hereinafter, the Primary Debt, Advancements, Costs, Additional Liabilities and Extensions are referred together as the "Indebtedness").

Mortgagor hereby further covenants with the Mortgagee as follows:

1. Care and Condition of Mortgaged Property. Mortgagor shall (a) promptly repair, restore or rebuild the Mortgaged Property, or any portion thereof, which is damaged or destroyed; (b) keep the Mortgaged Property in good condition and repair, without waste, and free from encroachments and from mechanic's or materialman's liens or claims for liens not expressly subordinated to this Mortgage; (c) pay when due any indebtedness which may be secured by a lien or charge on the Mortgaged Property; (d) comply with all requirements of law and covenants and restrictions of record applicable to the Mortgaged Property or its use; (e) permit no change in or alteration of the general nature of the Real Estate and the Improvements without Mortgagee's prior written consent; and (f) permit Mortgagee to enter upon and inspect the Mortgaged Property at all reasonable times.

2. Warranties. Mortgagor covenants and warrants that: (a) Mortgagor is lawfully seized of the Real Estate in fee simple, has valid and indefeasible title to the Mortgaged Property and has a good and legal right to convey and mortgage the Mortgaged Property; (b) the Mortgaged Property is and will remain free from all liens and encumbrances except only mortgages and liens in favor of Mortgagee or ~~superior~~ liens and mortgages approved by Mortgagee; and, (c) Mortgagor will warrant and defend title to the Mortgaged Property against all claims made thereon.

3. Insurance. Mortgagor shall keep the Mortgaged Property insured against loss by fire, extended casualty, vandalism, malicious mischief and such other hazards as reasonably may be required from time to time by Mortgagee for the benefit and protection of Mortgagee, including comprehensive and contractual liability insurance (together, the "Required Insurance"). The Required Insurance shall be written in forms, amounts, and by companies reasonably satisfactory to Mortgagee, and losses thereunder shall be payable to Mortgagee pursuant to standard noncontributing mortgage endorsements in favor of Mortgagee. Unless otherwise agreed by Mortgagee, all policies of Required Insurance, including additional and renewal policies, shall be deposited with and held by Mortgagee. Any monies received as payment for any loss under any of the Required Insurance paid over to Mortgagee may be applied, at the option of Mortgagee, either to the prepayment of any portion, as Mortgagee may select, of the Indebtedness, without premium, or to the reimbursement of Mortgagor for expenses incurred by Mortgagor in the restoration or repair of the Mortgaged Property. Proceeds paid or payable to Mortgagor of the Required Insurance shall be applied to restoration of the Mortgaged Property in such fashion as Mortgagee reasonably may require.

4. Taxes. Mortgagor shall pay and discharge or cause to be paid and discharged when due, and before any penalty attaches, all taxes (including real and personal property taxes), general and special assessments, water and sewer rents or assessments, and all other governmental and municipal charges and impositions of any kind imposed upon or assessed against Mortgagor or the Mortgaged Property, or any part thereof, or arising in respect of the occupancy, use or possession thereof.

5. Protection of Security by Mortgagee. Mortgagee may, at Mortgagee's option, but without any duty or obligation of any sort to do so and without in any way waiving or relieving any

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default by Mortgagor, make any payment and perform any act required of Mortgagor by this Mortgage, including but not limited to, payment of insurance premiums, taxes, assessments, repair expenses and prior liens and encumbrances. All expenses so incurred, including reasonable attorneys' fees, and any other reasonable expenses incurred by Mortgagee to protect the Mortgaged Property shall constitute Advancements and shall be immediately due and payable by Mortgagor.

6. Condemnation. If all or any part of the Mortgaged Property, is taken or damaged pursuant to an exercise, or threat of exercise, of the power of eminent domain, the entire proceeds of the award or compensation payable in respect of the part so taken or damaged are hereby assigned to and shall be paid directly to Mortgagee. The proceeds of any award or compensation actually received by Mortgagee after deduction therefrom of all costs and expenses including reasonable attorneys' fees incurred by Mortgagee in connection with the taking, at Mortgagee's option, may be applied, without premium, in part or entirely to payment of the Indebtedness or to restoration of the Mortgaged Property.

7. Events of Default. Time is of the essence of this Mortgage.

(a) Monetary Default. The occurrence of a Monetary Default (as defined in the Loan Agreement) under the Loan Agreement shall constitute a "Monetary Default" under the terms of this Mortgage, for which IHCD A shall have all rights and remedies available to it under the Loan Agreement, and any other of the Loan Documents.

(b) Non-Monetary Default. The occurrence of any one of the following shall constitute a "Non-Monetary Default" under this Mortgage:

(i) Default in the performance of any covenant or term of this Mortgage, or in the performance of any covenant or term of any other mortgage or agreement of record against the Mortgaged Property.

(ii) If any part of the Mortgaged Property or all or any substantial part of the property or assets of Mortgagor is placed in the hands of any receiver or trustee, or Mortgagor consents, agrees or acquiesces to the appointment of any receiver or trustee.

(iii) The institution of proceedings to enforce or foreclose any other mortgage or lien upon all or any part of the Mortgaged Property.

(iv) Any warranty, representation or statement made or furnished to Mortgagee by or on behalf of Mortgagor that proves to have been false in any respect material to IHCD A when made or furnished.

(v) The occurrence of any Non-Monetary Default under the Loan Agreement.

8. Remedies.

(a) For Monetary Default. Upon the occurrence of a Monetary Default pursuant to Section 7(a) of this Mortgage, Mortgagee, at its option, may immediately exercise any one or more of the rights and remedies for a Monetary Default under Section 8.01 of the Loan Agreement and/or foreclose the mortgage lien created by this Mortgage against the Mortgaged Property, to enforce every other security interest created by this Mortgage against the Mortgaged

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Property and to institute any action, suite or other proceeding which Mortgagee may deem necessary or proper for the protection of its interests.

(b) For Non-Monetary Default. Upon the occurrence of a Non-Monetary Default Section 7(b) of this Mortgage, Mortgagee, at its option, may immediately exercise any and all rights and remedies available to it for a Non-Monetary Default pursuant to Section 8.02 of the Loan Agreement.

9. Foreclosure and Application of Proceeds. All expenses which may be paid or incurred by or on behalf of Mortgagee in connection with the foreclosure of this Mortgage for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs of procuring all title searches, policies and examinations and similar data and assurances with respect to title as Mortgagee reasonably may deem necessary to prosecute such suit shall constitute Advancements, shall be immediately due and payable by Mortgagor, with interest thereon as provided in the Note, and shall be allowed and included as Indebtedness in the judgment for sale. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order or priority: First, on account of all Advancements incident to the foreclosure proceedings and all Costs; second, all other items which under the terms of this Mortgage constitute Indebtedness additional to the Primary Debt; third, all principal, interest and other amounts remaining unpaid on the Primary Debt; and fourth, any remainder to the person or persons entitled thereto as determined by the court in the foreclosure proceedings. In any action or proceeding brought under this Agreement or the indebtedness evidenced by the Note, no deficiency or other money judgment shall be enforced against Mortgagor or its partners, personally, the indebtedness evidenced by the Note constituting a nonrecourse obligation, except that foreclosure actions (or similar proceedings) may be maintained. However, any judgment obtained shall be enforced only against the security for the Note or the indebtedness evidenced thereby, provided that nothing contained herein shall be deemed to prejudice the rights of Mortgagor to recover from Mortgagor all funds, damages or costs (including, without limitation, attorneys' fees) incurred by Mortgagor as a result of fraud or material misrepresentation by or on behalf of Mortgagor or the general partner thereof.

10. Foreclosure Proceedings and Receiver. Upon the commencement of any proceedings to foreclose this Mortgage, Mortgagee shall be entitled forthwith to the appointment of a receiver or receivers, as a matter of right, without the giving of notice to any other party, without regard to the adequacy or inadequacy of any security for the Indebtedness and without the requirement of any bond. Mortgagee shall be entitled to recover judgment either before or after or during the pendency of any proceedings for the enforcement of this Mortgage. The right of Mortgagee to recover such judgment shall not be affected by the exercise of any other right, power or remedy for the enforcement of this Mortgage, or the foreclosure of the lien of this Mortgage.

11. No Exclusive Remedy. Each and every right, power and remedy conferred upon or reserved to Mortgagee in this Mortgage is cumulative and shall be in addition to every other right, power and remedy given in this Mortgage or now or hereafter existing at law or in equity. No delay or omission of Mortgagee in the exercise of any right, power or remedy shall be construed to be a waiver of any default or any acquiescence therein.

12. Severability. In the event any one or more of the provisions of this Mortgage for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in this Mortgage.

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13. Notices. All notices pursuant to this Mortgage shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by certified United States mail, addressed to:

If to Mortgagor:

Attention: _____

If to Mortgagee:

Indiana Housing and Community Development Authority
30 S. Meridian Street, Suite 1000
Indianapolis, IN 46204
Attention: General Counsel

or at such other place as either party may, by notice in writing, designate as a place for service of notice.

14. Successors and Assigns. This Mortgage shall (a) run with the land, (b) apply and extend to, be binding upon and inure to the benefit of Mortgagor, Mortgagor's heirs, administrators, successors and assigns and all persons claiming under or through Mortgagor, and the word "Mortgagor" shall include all such persons, and (c) shall apply and extend to, be binding upon and inure to the benefit of Mortgagee and Mortgagee's successors and assigns.

15. Miscellaneous. The captions in this Mortgage are for convenience only and do not define or limit the provisions of this Mortgage. All changes to this Mortgage must be in writing signed by Mortgagee and, if this Mortgage is recorded, shall not be effective until recorded. The word "Mortgagee" shall include the successors and assigns of Mortgagee, and the holder or holders, from time to time, of the Note and any other Indebtedness instrument. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

16. Waiver of Jury Trial. Mortgagor and Mortgagee, after having had the opportunity to consult with counsel, knowingly, voluntarily and intentionally waive any right they may have to a trial by jury in any litigation based upon or arising out of this Mortgage or any related instrument or agreement, or any of the transactions contemplated herein, or any course of conduct, dealing, statements (whether oral or written), or actions by and between Mortgagor and Mortgagee. Mortgagor and Mortgagee shall not seek to consolidate by counterclaim or otherwise, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

(Remainder of page intentionally left blank.)

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The undersigned attests, subject to the penalties for perjury that he/she is the properly authorized representative, agent, member or officer of Mortgagor that he/she has not, nor has any other member, employee, representative, agent or officer of Mortgagor, as applicable, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

MORTGAGOR:

Title: _____

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EXHIBIT A

Mortgage
_____ *and Indiana Housing and Community Development Authority*

LEGAL DESCRIPTION

Document comparison by Workshare Professional on Tuesday, September 29, 2009
8:37:04 AM

Input:	
Document 1 ID	interwovenSite://DT-BOXOFRAIN/DT1/1468711/5
Description	#1468711v5<DT1> - v5 IHCD/Section 1602 Tax Credit Exchange Program/Form of Mortgage (Final Draft)
Document 2 ID	interwovenSite://DT-BOXOFRAIN/DT1/1468711/6
Description	#1468711v6<DT1> - v6 IHCD/Section 1602 Tax Credit Exchange Program/Form of Mortgage (Final Draft)
Rendering set	Standard

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Deletion	
<u>Moved from</u>	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Moved to	0
Style change	0
Format changed	0

Total changes	5
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